

# 38TH ANNUAL

# AIRPORT LAW WORKSHOP



 KAPLAN KIRSCH ROCKWELL  
projects that keep life moving™



Session #

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## ACDBE, Title VI and Beyond

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# What we hope to accomplish



- General overview of the law
  - ACDBE
  - Title VI
- Recent developments in ACDBE arena
- Recent developments in Title VI arena
- Consider mere compliance vs. encouraging small and minority businesses – models for consideration

Mostly Panel Discussion!



# DBE... one topic, two parts



- Part 26 (49 CFR Part 26)  
United States Dept. of Transportation



- Part 23 (49 CFR Part 23)  
US DOT (administered by Federal  
Aviation Administration)



# Definitions



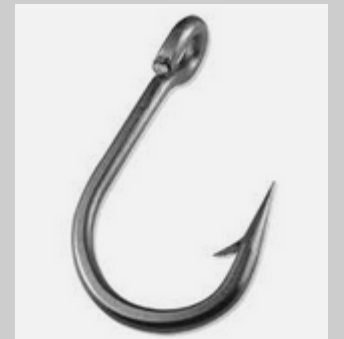
- ACDBE – Airport Concession Disadvantaged Business Enterprise – see 49 CFR Part 23
- DBE – Disadvantaged Business Enterprise – see 49 CFR Part 26
- Part VI – from the Civil Rights Act of 1964
  - Originally prohibits discrimination on basis of race, color, national origin
  - Amended to add additional protected classes over time



# Which airports are required to have an ACDBE program?



- **Primary airports that receive Airport Improvement Program grants**
- An ACDBE program is required as a condition of grant funding



# What are the objectives of the USDOT ACDBE program?



- To ensure nondiscrimination in the award and administration of *opportunities for concessions* by airport sponsors receiving DOT financial assistance
- To create a level playing field on which *ACDBEs* can compete fairly for opportunities for *concessions*
- To ensure that the Department's *ACDBE* program is narrowly tailored in accordance with applicable law



# What is an airport concession?



- A for-profit business that is located on an airport or conducts “covered activities” on an airport such as maintaining advertising displays
- Engaged in the sale of consumer goods or services to the travelling public\*\*
- Has an agreement with an airport owner or another concessionaire



\*\* Pending NPRM clarifies this



Not covered / not a concession



# What is an airport concession? *(continued)*



- **Examples:** restaurants, retail and specialty shops and kiosks, taxi and limo services, [shuttle services](#), rental car services, mail and shipment services, luggage cart services, [hotels](#), personal services (i.e. shoe shine and day spas), banking & currency exchange services, [web-based and electronic services \(i.e. Wi-Fi\)](#), vending machines, [medical clinics](#), [gas stations](#), goods and services firms that supply concessionaires (i.e. food wholesalers and consulting firms), and [management contracts](#) for activities that take place on the airport (i.e. parking facility or passenger lounge management contractors).



# What is an ACDBE program?



- Must be described in a written document that meets regulatory requirements of Part 23 – submit to FAA
- Explains how the airport sponsor will implement the ACDBE program at its airport(s)
- Sponsor must implement program in accordance with plan
- Identifies the ACDBE liaison officer (ACDBELO)...
- **In coordination with other appropriate officials**



# What is the role of the ACDBELO?



The ACDBELO is responsible for:

1. Developing
2. Implementing and
3. Monitoring the ACDBE program



# What is the role of the ACDBELO (continued)



## Coordination!

### Program development and goal-setting processes

- Solicitation and contract language requirements
- Ensuring appropriate monitoring is happening
- Ensuring prior FAA approval is sought for long term, exclusive (LTE) concessions agreements before execution
- Ensuring organization understands what is considered a concession for Part 23
- Contact person regarding program for FAA and community



# ACDBE overall participation goals



## Two Goal Types:

- Car rental (passenger vehicle rental)
- Non-car rental (retail, food service, parking, etc.)

## General Goal Requirements:

- Based on total gross receipts
- Revenue threshold >\$200,000 annually.
- Updated every 3 years
- Goal achievements periodically reviewed
- Analyze and plan to rectify goal shortfalls

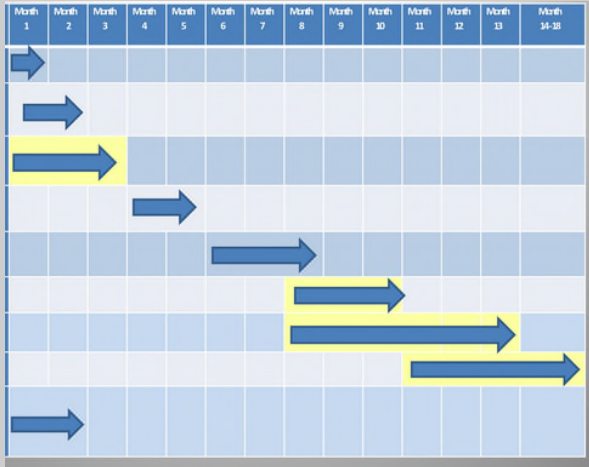
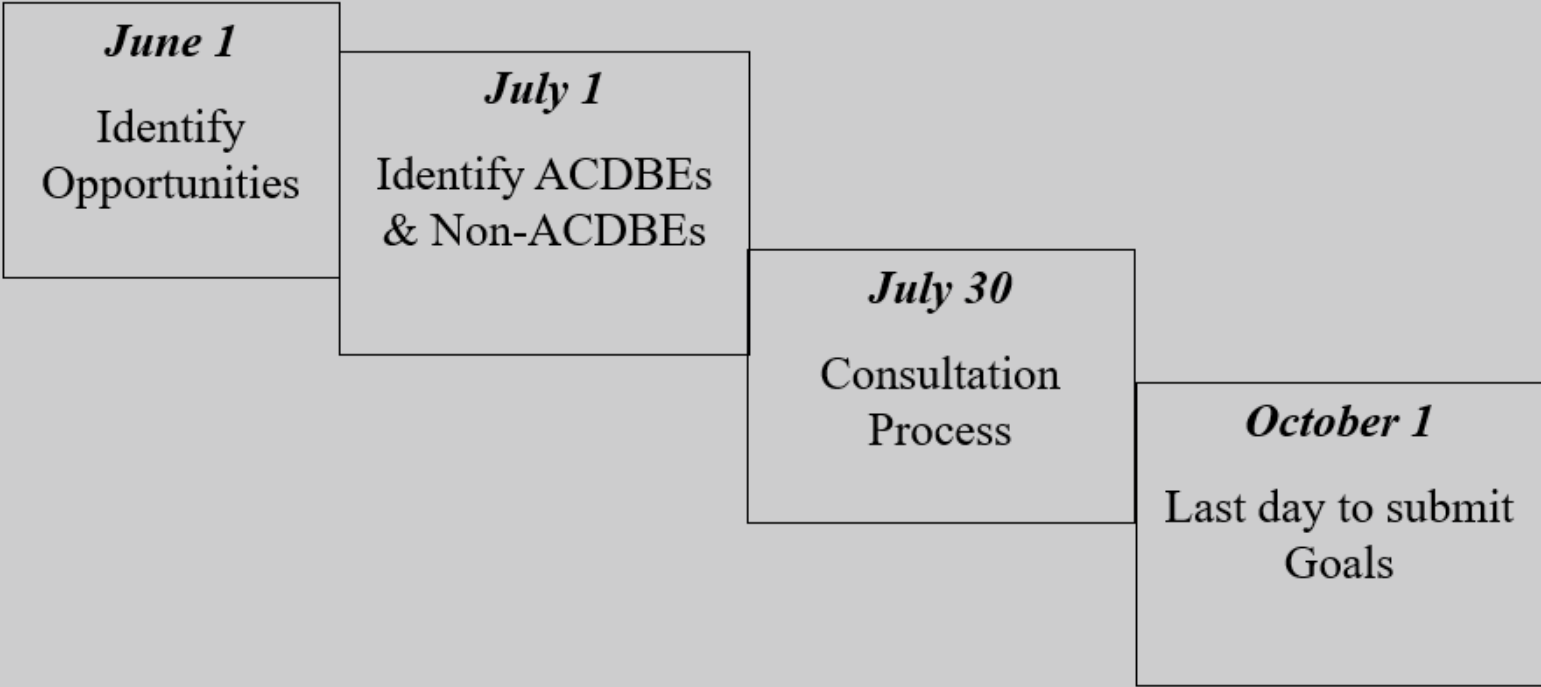
**GET TO THE  
CORE**



# Timing / Project Timeline



- AC/DBE Timeline



# ACDBE Monitoring



- Contract review
  - JV Agreements
  - Loan agreements
  - Other agreements among parties
- On-site visits
- Joint venture monitoring
- Terminations / substitutions





# Reporting requirements



- Report by March 1:
  - Car rental and non car rental ACDBE participation
- List of participating certified ACDBEs
  
- FAA Civil Rights Connect
- <https://faa.civilrightsconnect.com>



# Resources available



- Your CEO should have direct access!
- [Sample ACDBE Program](#)
- [Joint Venture Guidance](#)
- [Principles for Evaluating Long-Term, Exclusive Lease Agreements](#)
- [Car Rental Companies Good Faith Efforts Requirements](#)
- [Guidance for the Uniform Report](#)
- [Official Q&A's for Part 23](#)
- [ACDBE Goal Shortfall Analysis](#)



# Direct FAA support – it is out there!



Region	Name	Phone and Email
<b>Alaskan Region</b> Alaska	Sonia Cruz	(310) 725-3940 <a href="mailto:sonia.cruz@faa.gov">sonia.cruz@faa.gov</a>
<b>Western-Pacific Region</b> Nevada	Ofelia Medina	(310) 725-3945 <a href="mailto:ofelia.medina@faa.gov">ofelia.medina@faa.gov</a>
<b>Central Region</b> Iowa, Kansas, Missouri, Nebraska	Alexander Horton	(310) 725-3947 <a href="mailto:alexander.horton@faa.gov">alexander.horton@faa.gov</a>
<b>Western-Pacific Region</b> Northern California	Nancy Cibic	(847) 294-7182 <a href="mailto:nancy.cibic@faa.gov">nancy.cibic@faa.gov</a>
<b>Eastern Region</b> Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia		
<b>Western-Pacific Region</b> Arizona		
<b>Great Lakes Region</b> Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio, South Dakota, Wisconsin		

Region	Name	Phone and Email
<b>New England Region</b> Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Thomas Knox	(310) 725-3942 <a href="mailto:thomas.knox@faa.gov">thomas.knox@faa.gov</a>
<b>Western-Pacific Region</b> Southern California	Sonia Cruz	(310) 725-3940 <a href="mailto:sonia.cruz@faa.gov">sonia.cruz@faa.gov</a>
<b>Northwest Mountain Region</b> Colorado, Idaho, Montana, Oregon, Utah, Washington, Wyoming	Keturah Pristell	(404) 305-5734 <a href="mailto:keturah.pristell@faa.gov">keturah.pristell@faa.gov</a>
<b>Southern Region</b> Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, Virgin Islands	Dolores Leyva	(817) 222-5034 <a href="mailto:dolores.leyva@faa.gov">dolores.leyva@faa.gov</a>
<b>Western-Pacific Region</b> Hawaii	Gene Roth	(404) 305-5256 <a href="mailto:gene.e.roth@faa.gov">gene.e.roth@faa.gov</a>
<b>Southwest Region</b> Arkansas, Louisiana, New Mexico, Oklahoma, Texas		
<b>Western-Pacific Region</b> American Samoa, Guam, Northern Mariana Islands		



# Title VI



- Grant Assurances

- What's the #1 rule...don't forget about #1!

- Title VI of the Civil Rights Act of 1964
  - (race, color, national origin)

Special bonus material:

- Rehabilitation Act of 1975
- Age Discrimination Act of 1990
- Executive Orders
  - Executive Order 11246 (affirmative action)



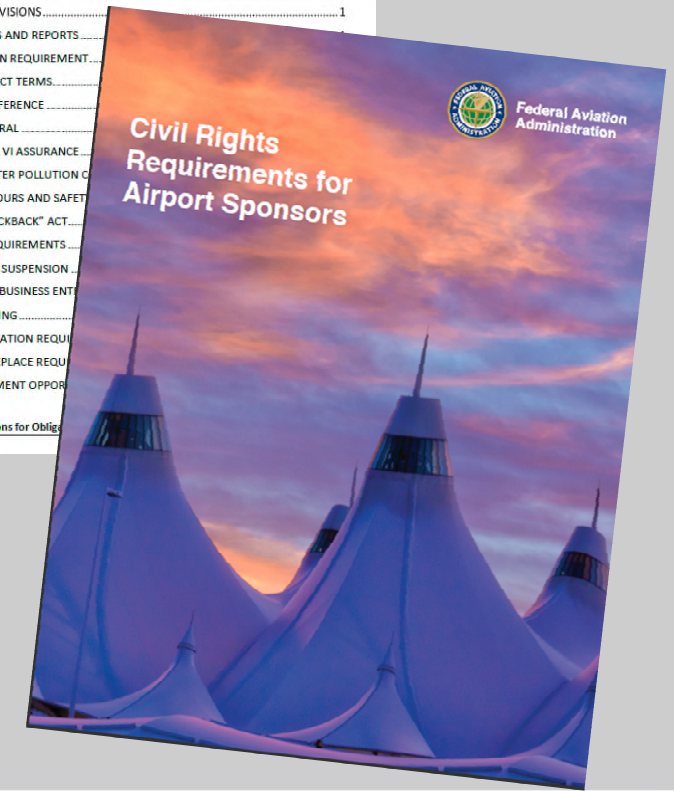
FAA  
Airports

**Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

**Contents**

Contract Guidance .....	4
1. Purpose of this Document .....	4
2. Sponsor Requirements .....	4
3. Typical Procurement Steps .....	5
4. Applicability Matrix for Contract Provisions .....	6
Appendix A – CONTRACT PROVISIONS .....	1
A1 ACCESS TO RECORDS AND REPORTS .....	1
A2 AFFIRMATIVE ACTION REQUIREMENT .....	1
A3 BREACH OF CONTRACT TERMS .....	1
A4 BUY AMERICAN PREFERENCE .....	1
A5 CIVIL RIGHTS - GENERAL .....	1
A6 CIVIL RIGHTS – TITLE VI ASSURANCE .....	1
A7 CLEAN AIR AND WATER POLLUTION C .....	1
A8 CONTRACT WORKHOURS AND SAFET .....	1
A9 COPELAND “ANTH-KICKBACK” ACT .....	1
A10 DAVIS-BACON REQUIREMENTS .....	1
A11 DEBARMENT AND SUSPENSION .....	1
A12 DISADVANTAGED BUSINESS ENT .....	1
A13 DISTRACTED DRIVING .....	1
A14 ENERGY CONSERVATION REQUI .....	1
A15 DRUG FREE WORKPLACE REQU .....	1
A16 EQUAL EMPLOYMENT OPPOR .....	1

Guidelines for Contract Provisions for Oblig  
Issued on June 19, 2018

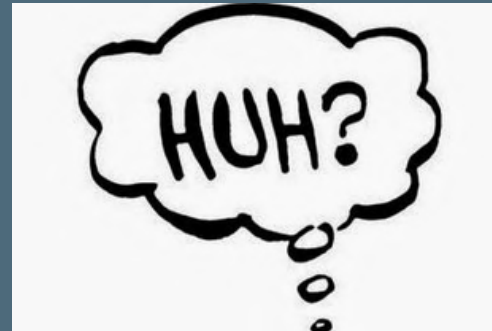


# Panel discussion





# Questions?



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